Central Law Journal

St. Louis, Mo., October 6, 1922

TAXATION OF NON-PAR VALUE STOCK

A number of states having made provision for the organization of corporations with non-par value stock, the case of People ex rel. v. Tax Commissioners, decided by the Appellate Division of the Supreme Court of New York (195 N. Y. Supp. 184), is of special interest. This case holds that a statute which places a value of $100.00 per share on stock of no par value, for purposes of taxation, is unconstitutional. The Court refers to Section 214 of the Tax Law of this state, which provided that every foreign corporation doing business in this state, with certain exceptions, should be subject to a minimum tax of one mill upon such portion of its issued capital stock at its face value as its gross assets employed within this state bore to its assets wherever employed. This Section contained the following clause: "If such a corporation has stock without par value, then the base of the tax shall be such a portion of its issued capital stock as its gross assets employed in its business in this state bear to the entire gross assets employed in its business, and its shares without par value shall be deemed to have a face value of one hundred dollars each for the purposes of this assessment." We quote from the opinion written by H. T. Kellogg, J., as follows:

"We cannot escape the conclusion that the expression 'shall be deemed,' as employed in the provision under consideration, does have the force of 'shall be determined.' The compulsory valuation of one hundred dollars required by the provision as thus construed to be placed upon every share of no par value stock is entirely arbitrary, and necessarily would result in unequal taxation. It would require corporations having issued stock of the actual value of five dollars per share to pay the same tax per share as corporations having issued stock the shares of which were in fact worth one thousand dollars per share. It might have the result of compelling corporations, employing in this state a capital of only one thousand dollars, to pay, for the privilege of doing their limited business, the same taxes as corporations employing within the state a capital of two hundred thousand dollars. The words above quoted from the opinion of Judge Vann in the Mensching case apply with equal force to the tax sought to be imposed in the case at bar under the provision quoted from section 214 of the Tax Law, and compel the conclusion that the provision is unconstitutional.

"Section 214 of the Tax Law, as it read prior to the enactment of chapter 640 of the Laws of 1920, did not contain the objectionable provision which we regard as unconstitutional. The law then provided for a minimum tax of not less than one mill upon each dollar of the issued capital stock of a foreign corporation apportioned to this state (chap. 628, Laws of 1919, sec. 6). It also provided as follows: 'If such a corporation has stock without par value, then the base of the tax shall be on such a portion of its paid-in capital as its real and tangible personal property in the state bears to its entire real and tangible personal property' (chap. 628, Laws of 1919, sec. 6). This was an entirely reasonable provision, and imposed a tax which would bear equally upon all foreign corporations. Chapter 640 of the Laws of 1920, by which the unconstitutional provision above referred to was sought to be imposed, did not in express terms repeal the reasonable provision of section 214 of the Tax Law which we have referred to. The effect of our holding that the later provision is unconstitutional is therefore to reinstate the earlier provision (People ex rel. Farrington v. Mensching, 187 N. Y. 8). The minimum franchise tax imposable upon relator is therefore determinable by its actual capital employed within the state."

We note that the Missouri Statute enacted at the 1921 session of the Missouri Legislature (Laws of Mo., 1921, page 661) provides as follows, in Section 12: "For the purpose of computing any organization taxes required to be paid under the laws of this state, and such tax or taxes, if any,

the determination of which is based on the par value of shares of stock and not on the number of shares or the actual or ascertained value thereof and for the purpose of any statutory provision limiting the relation between indebtedness and capital stock, each share of stock without any nominal or par value, under the provisions of this act, shall be considered the equivalent of a share having a nominal or par value of one hundred dollars."

According to the New York decision above referred to, it would seem that all such arbitrary provisions are unconstitutional.

In the case of People ex rel. v. Mensching (187 N. Y. 8) the Court had before it a provision of a New York Stock Transfer Tax Act, which provided for the imposition of a tax of two cents "on each share of One Hundred dollars of face value or fraction thereof." (Note that the tax was not imposed "on each One Hundred dollars of face value or fraction thereof.") The Court held that this clause was an arbitrary discrimination in favor of one as against another of the same class, which constituted a violation of primary rights and as such was unconstitutional.

This act did not classify by arranging according to quality, but by arranging according to accident. The Court mentioned that while it placed all corporate shares in a class, still it did not treat all members of the class alike, but without method or order bore heavily upon some and lightly upon others, which, in effect, constituted a further classification. "Thus it imposes the same tax on the sale of dollar shares and hundred dollar shares. The tax is measured by the number of shares, regardless of face value or actual value. Shares of the same corporation might be taxed ten times as much, or only one-tenth as much in one or as compared with the next, if simply the face value of each share were changed, without changing the aggregate of the face value of all the shares, or the amount of capital invested, or the value of the assets in which it was invested. Shares are so classified as to tax the sale of those issued by one corporation several times as much as those issued by another of the same kind, and in exactly the same situation, without any reason for the distinction. * * * Even if a tax on farms according to acreage might be sustained, it is obvious that a tax on farms according to the number of fields into which they are divided would not be valid."

Further, the Court stated that the serious objection to the statute under consideration is not that in some abnormal instances of low face value might amount to confiscation, "but that the classification is as purely arbitrary as the division of lands into fields to which we have alluded. Granting the almost unlimited power of the legislature to classify as it sees fit, still there is no plausible or positive reason why one hundred acres in a single field should not pay the same tax as one hundred acres of equal value in ten fields."

A negro was an important witness in a trial in the courtroom of a little town in the South, and he was carefully coached by his lawyers and told exactly what to say. Abe knew his evidence off by heart, but when he entered the crowded courthouse, and saw the sea of faces all around him, he suffered from a severe attack of stage fright. His lawyer stood up, and gently and kindly, and with a winning smile, said: "Now, Abe tell the judge and jury everything you know about the case." Abe looked startled, and glanced fearfully around the court, then he gasped: "When I started fo' de court house dis mornin' der wuz only two people in de world dat knew what I wuz to say—me and Massa Brown. Now Massa Brown am de only one dat knows."—Southwestern.

Magistrate—"So you broke an umbrella over your husband's head. What have you to say?"

Defendant—"It was a haccident, sir."

Magistrate—"How could it be an accident?"

Defendant—"Well, I 'ad no intention of breaking the umbrella."—The Passing Show.

NOTES OF IMPORTANT DECISIONS.

RECENT DECISIONS IN THE BRITISH COURTS

Two recent cases on the interesting subject of evidence in criminal cases for a summary of which we are indebted to the Solicitors' Journal may be noted. The Court of Criminal Appeals' decision in Rex v. Charles Henry Willett[1] illustrates a practical difficulty in our law of Criminal Evidence. Where inadmissable evidence against a prisoner gets in at the trial, and is then disallowed by the presiding judge, it is the duty of the latter to warn the jury not to take it into consideration in arriving at their verdict. The precise effect of this warning it is difficult to guess—probably it is negligible. To ignore altogether a piece of testimony placed before them, on a mere ground of technical jurisprudence, is a psychological feat which one can scarcely expect any jury to succeed in achieving. The difficulty is increased when two prisoners are jointly indicted; an admission by one is put in as evidence against him, but, of course, is not evidence against the other; the jury are told to consider it in discussing the evidence against the one accused person, but to leave it out of consideration in finding their verdict concerning the other. Now in Willett's case an admission by an alleged accomplice of the accused had come out in the cross-examination of one of the witnesses for the prosecution, and at the conclusion of the presiding chairman's summing up—the trial took place at Ripon Quarter Sessions—counsel for the defence admitted that this admission was not evidence against the accused, a submission to which the chairman at once assented as correct. He had not warned the jury, however, in his summing up, not to take it into consideration. At least, no note of any such warning appeared in the shorthand note which, however, was alleged to be somewhat imperfect. This, however, did not matter, for the Court of Criminal Appeal held, no doubt correctly, that a trial judge must warn the jury against relying on inadmissible evidence in the most clearly emphatic and undoubted way; if he had not given his warning in a sufficiently impressive manner to fix it in the memory of the shorthand note-taker, then he had failed to give a sufficiently full and proper direction. The conviction was quashed accordingly. But the case illustrates a growing tendency, no doubt an inevitable one, of the Court of Criminal Appeal to quash verdicts more readily on the ground of some failure to observe technicalities of procedure, which have little real effect on the result of a trial, than on the ground of a substantial miscarriage of justice.

The Court of Criminal Appeal has, on occasion, quashed a verdict of guilty merely because its members feel real doubt as to guilt of the prisoner, although no error of procedure has taken place. Rex v. John Armstrong[2] is one of the rare examples of such a decision in a reported case, and even here as the Lord Chief Justice intimated, a dissenting member of the Court was in favor of affirming the conviction. Separate judgments are not permitted in this court, unless the bench resolves otherwise for some special reason, so that the grounds on which one of the three judges—the Lord Chief Justice, Mr. Justice Shearman and Mr. Justice Avory—differed from his learned brethren are not known. Here two prisoners, jointly indicted for larceny at Cardiff City Sessions, had been both convicted. The charge was that of stealing and receiving a suit case which contained some jewelry and also a piece of soap and a shaving brush. Some days afterwards the two prisoners were together in a public house when one of them attempted to sell some of the stolen jewelry. He was arrested and searched; so was his companion, and the latter was found to be in possession of the piece of soap and the shaving brush, while the first prisoner had the jewelry.

(1) 66 S. J. 517.

(2) 66 S. J. 517.

Both men stated that the second prisoner knew nothing about the theft, and that the first prisoner had made him a present of the soap and brush. Now the doctrine of "recent possession", as is well known, is to the effect that any person found in "recent possession" of property which has been stolen is presumed to be guilty either of stealing or of receiving it unless and until he gives some prima facie reasonable explanation of his possession. The explanation given by the second prisoner was clearly a reasonable account of how he might have come to possess the stolen soap and brush; this rebutted the presumption of guilt. That being so, no sufficient evidence to connect him with the crime remained, and the court felt that it ought not to affirm the conviction which might possibly be erroneous merely because the jury, with whom the responsibility rested, had been quite properly directed as to the law of the trial judge.

Morgan v. Morgan's Judicial Factor 1922,[3] disclosed a state of facts which does occasionally occur, and when it does occur is difficult to deal with, namely, a wife paying the premiums of an insurance on her husband's life, and at his death the policy proceeds being diverted from the wife by operation of law. Two English cases have a bearing on the position. In re Leslie[4] Fry L. J. dealing with the case of payment of premiums on a policy by a mere stranger, i. e., one who was neither a trustee for the owner nor a part owner said. "On principle it is difficult, if not impossible, to see why such payments, which, when made without contract or request, are a mere impertinence, should create a lien upon the property. It is evident that in themselves they would not even create a ground of personal action against the person eased by the payment, for it is certain that moneys paid by A. and B. give no right of action against B. unless they are paid upon his request". In a later passage in his opinion he says, "In the next place, with regard to payments made by a part owner, it appears to me that, except by contract, such payments give no title to the person making them against the other part owner or part owners." In Falcke v. Scottish Imperial Insurance Company 1886[5] Bowen, L. J. at p. 248, said. "The general principle is, beyond all question, that work and labor done or money expended by one man to preserve or benefit the property of another do not, according to English law, create any lien upon the property, saved or benefited, nor, even it standing alone, create any obligation to repay the expenditure. Liabilities are not to be forced upon people behind their backs any more than you can confer a benefit upon any man against his will"—.

Lord Hunter was not satisfied that these judgments were applicable in Scotland, and he examined the Scottish authorities.

Lord Stair[6] speaking of recompense, says, "This remuneration is a most natural obligation . . . . and therefore this is a common exception in all positive laws, that every one should be liable in quantim locupletior factus sit . . . Hence arises the action in law de in rem verso: whereby whatsoever turneth to the behoof of any makes him liable for recompense, though without any engagement of his own". Other institutional writers on Scots law have made similar statements[7] In Fernie v. Robertson 1871[8] Lord Gifford at p. 440 says, "The principle of recompense is a very broad one and admits of wide application . . . For illustrations of the general rule, reference may be made to Morison's Dictionary, voce 'Recompense' 13399[9]. The principle has also been applied in several more modern cases."

(3) 1, S. L. T. 247.
(4) 23 Ch. D. 552.
(5) 34 Ch. D. 234.
(6) Inst. 1. v111 6 and 7.
(7) See Erskine III i. II; Bell's Prin. sec. 538.
(8) 9 M. 437.
(9) See particularly Jack, 13412; Halkett, 13412 Rutherford, 13422.

There are cases of liferenter and tenant expending money upon property in which they have a limited interest without necessarily having a claim against the fiar or proprietor. In Rankin v. Wither 1886[10] a husband who during his wife's life rebuilt a house belonging to her at his own expenses was held after her death to have no claim of recompense for melioration against her heir at law. The Lord Justice Clerk said, "This money was spent partly for the benefit and convenience of the pursuer and his wife while they both lived, and of his wife if she should survive him, and partly for his own benefit if he should be the survivor, as, according to her assurance, he was to become the fiar of the property. Does that come under the head of recompense? I think it does not."

In Morrisons v. Allan 1886[11] Lord President Inglis said, "The general rule of law, I think, is quite undoubted—that where a liferenter expends money in improving the subject of his liferent he is to be presumed to do so for the purpose of enhancing his own benefit and enjoyment of the estate. But this rule is founded upon a presumption only, and I think that presumption must yield to the facts and circumstances of the particular case whenever these are sufficient to show that there is a view in the mind of the liferenter and a purpose for which the improvements were made inconsistent with the notion that they were made with a view to his own personal enjoyment of the estate only". In his notes to Stair, Professor More[12] says, "To lay a proper foundation for a claim of recompense or remuneration, the labor or expense must be bestowed either with the direct intention of benefiting the third party against which the claim is made or in the bona fide belief that the subject belongs to the person by whom the expense or labor is bestowed". In a later passage in the same note he says, "Where, however, a person who has an interest in a subject finds it necessary to lay out expense upon it both for his own benefit and that of the proprietor, he may in certain cases have a claim for recompense against the latter".

Lord Hunter reached the conclusion that it is not necessary to hold in all cases that a party who has expended money on a subject in which he has a limited interest is barred from recovering any of that expenditure. In the case before him he held that the facts warranted the application of the doctrine of recompense.

An unusual set of circumstances was the occasion of a claim in tort based on the doctrine of a "trap" in the case of Stone v. Madame Tussaud & Son, Limited. A person who invites or permits another to use his premises must take reasonable care, either to leave no "perils" on those premises, or to give the invitee adequate notice of their existence. If he fails to do so, he is guilty of "leaving a trap" for the invitee, and if the latter is injured he can recover damages for the occupier's negligence. But what amounts to notice of a trap? In Stone v. Tussaud (supra) the plaintiff had visited the defendants' premises to see the waxworks therein exhibited. In entering the "Napoleon Rooms" she saw a bust of Napoleon on the walls of one of them and went closer to look at it. In so doing she did not see the existence of a small staircase, close under the picture, leading down to another room. She fell down it and suffered injuries. The question was whether this staircase—unfenced and without a door—amounted to a "trap". The defendants contended that the staircase was kept lighted, and that such lights either (1) made it safe, so that it was not a trap, or else (2) gave notice of its existence so as to warn visitors of any "unsafeness" which might exist. They contended that the defendant must have seen the "trap" had she not been so pre-occupied with the bust of Napoleon as not to look where she was going. The judge took the same view and held that, in any event, the lighting of the staircase was a sufficient warning of any

(10) 13, R. 903.
(11) 13 R. 1156.
(12) Note G on "Recompense", 3.

perils attending its existence. People who visit waxworks are apt to become preoccupied with the exhibits, and so neglect to look where they are going; but that is negligence of their own which the occupier cannot fairly be held to invite, nor can he be held liable to compensate the invitee for damage arising thereout.

In the divorce action, Doherty v. Doherty[13] brought by a husband against his wife on the ground of adultery, a defence appears to have been made similar to that made in the notable recent English case Gaskill v. Gaskill 1921 p. 425. The Lord Ordinary, however, found facts and circumstances which led him to a different conclusion than was reached in that case. In Gaskill's case the period of gestation was 331 days whereas in Doherty's case the alleged period was 348 days.

Glasgow, Scotland. DONALD MACKAY.

(13) 1, S. L. T. 245.

LIABILITY OF RAILROAD FOR MALICIOUS ACT OF UNFIT WATCHMAN.—About one o'clock one morning the plaintiff's intestate, in company with several others in an automobile, arrived at the crossing of the defendant's railroad, where they were stopped by closed gates, although no train was approaching. After calling several times, the gateman came out of a nearby storehouse with a lantern in his hand. The chauffeur asked him to raise the gates, to which he replied, "There is other crossings you can go over besides this one." The chauffeur told him he did not have time to look for other crossings when there was no train standing there and no train approaching. The watchman then went towards the tower and started up, mumbling something the driver could not understand. He raised the gates and as the automobile was leaving the crossing he fired three shots at the rear of it, one of which struck the deceased in the back resulting in her death. About three months later the watchman, whose name was Ford, was adjudged insane. Holding that the defendant railroad company was liable on the ground that the employee was not a fit person for the position, the Supreme Court of Appeals of Virginia, in Davis v. Merrill, 112 S. E. 628, in part said:

"The record shows that Ford was employed by W. R. Crawley, who had charge of all the defendant's watchmen around Norfolk, upon the recommendation of S. A. Coleman who held a position as watchman with the Norfolk & Western, and made no inquiry of any one else concerning Ford's past record, habits, or general fitness for the position. Had he looked up his record with the Norfolk & Western showing his discharge for drunkenness, and made some inquiry of the members of the police force at Norfolk, he would probably not have given him the position."

In Williams v. Mo. Pacific Ry. Co., 109 Mo. 475, 18 S. W. 1098, the court said:

"The real question here is whether there is evidence to support the finding of the jury. According to the plaintiff's witnesses, Clark was a habitual drinker, often drunk when off and sometimes when on duty, and was seldom free from the influence of liquor. From these facts the jury had a right to draw the inference that Clark was an unfit person to be trusted with the responsible duties of a locomotive engineer, even in his sober intervals. The evidence shows that it requires a man of steady nerve, cautious, and not forgetful, to discharge such duties. That these elements of physical and mental strength will and do yield and give way from continued intemperate habits is but common information. Besides this, all of the defendant's witnesses who testify upon the subject say that a man having the habits which the plaintiff's witnesses say Clark had should not be put in charge of a locomotive engine. It requires no temperance lecture to satisfy the mind of any one that there is an abundance of evidence to uphold and support the verdict on this issue."

In Christian v. Columbus R. Co., 79 Ga. 460, 7 S. E. 216, we find this:

"But this declaration alleges that the railroad company employed him knowing his infirmity; and that, of course, subjects the company to the consequences, if it be true. Their employment of an improper person to come in contact with the public as their agent would be gross misconduct."

PAYMENT AS WAIVER OF BREACH OF WARRANTY.—In the recent case of Herbrand Co. v. Lackawanna Steel Co., 280 Fed. 11, the Circuit Court of Appeals of the Sixth Circuit held that the payment of the purchase price by the vendee, with knowledge of the defect in the goods delivered, did not, as a matter of law, waive the right to sue for the breach of warranty.

A vendee may, of course, waive his right to sue for the breach of warranty. Where there is no knowledge of the defect the payment of the purchase price is not by itself a waiver of the breach (Nauman v. Ullman, 102 Wis., 92). Before the Uniform Sales Act was adopted many courts, including New York, took the view that a payment with knowledge of the breach of implied warranty was a waiver of the breach (Osborne v. Birdsall, 57 A. D., 41). The weight of authority, as well as the Sales Act, sustains the decision in the present case, that a payment, even with knowledge of the defect, is not as a matter of law a waiver of the breach (Gil-

more v. Williams, 162 Mass., 351). Of course, from the fact of payment, the jury is justified in finding an intent to waive the breach. We quote from the opinion by Judge Knappen:

"In the instant case no question of due notice of breach is involved, for previous to the giving of the acceptances plaintiff had been notified that the steel was seamy and unfit for defendant's purposes. Moreover, the act (section 8449) expressly gives to the buyer, in case of breach of warranty, an election of any one of four courses, two of which are pertinent here, viz: First, to accept or keep the goods and set up against the seller the breach of warranty by way of recoupment against action for the price; and, second, accept or keep the goods and maintain an action against the seller for damages for breach of warranty. At the common law, as recognized by this court, the choice of remedies in case of breach of warranty given a buyer who does not disaffirm and rescind the contract are substantially (if not identically) the same as under section 8449 of the Ohio Code (Dodsworth v. Hercules Iron Works, 66 Fed., 483, 488, 13 C. C. A., 552); and previous to the enactment of the Uniform Sales Act it was the general and we think the better rule that retention of the goods and payment of the purchase price, or suffering judgment therefor without defense, and with knowledge of breach of warranty, did not, as matter of law, bar action for the breach—the question of waiver being at the most one of fact (Mechem on Sales, sec. 1836, 24 R. C. L., sec. 515, 35 Cyc., 433). Upon the subject of waiver generally see Williston on Sales (sec. 488, pp. 850-853). These propositions are amply supported by authorities. No reason is apparent why the same construction should not be put upon the code provision in question. Indeed, there is even greater reason for applying the rule of nonwaiver by payment under a statute expressly declaring that the warranty survives acceptance and, in connection with section 8449, expressly giving right to accept after knowledge."

PERMITTING HEDGES TO OBSTRUCT VIEW AT HIGHWAY INTERSECTION AS PROXIMATE CAUSE OF HORSE TAKING FRIGHT AT AUTOMOBILE SUDDENLY APPEARING.—In Goodaile v. Board of Commissioners, et al., 207 Pac. 785, decided by the Supreme Court of Kansas, it appeared that the owners of land bordering on highways at a crossing permitted high hedges to grow along the road. These hedges obstructed the view of one road from the other. While a woman was driving a horse along one of the roads approaching the crossing, an automobile suddenly appeared at the crossing and the horse became frightened, and the woman was thrown out of her buggy and injured. It was held that the owners of the land were not liable in damages for the injuries sustained by her. A statute required the owners to keep the hedges trimmed down to a certain height and imposed a penalty for its violation, and it was shown that the owners had violated the statute. The Court held in this respect that the statute did not create any civil liability on the part of the owners of the land who violated its terms. Speaking of the proximate cause of the injuries complained of, the Court said:

"Even if it be admitted that the high hedges were in part the cause of the accident which resulted in the plaintiff's injury, it cannot be said that they were the efficient intervening cause of the accident. The horse was frightened by an automobile. That was what caused the accident. In Eberhardt v. Tel. Co., 91 Kan. 763, 139 Pac. 416, it was held that a telephone guy wire extending into the public highway was not the cause of an injury to one who was riding in a wagon with her husband, who was driving a span of mules that ran away, and ran into the wire and thereby injured the plaintiff in that action. The latter case is closely parallel to the present one. The proximate cause of the injury to the plaintiff in this action was the frightening of her horse, and not the condition of the hedges. Railway Co. v. Bailey, 66 Kan. 115, 122, 71 Pac. 246; Norris v. Ross Township, 98 Kan. 394, 161 Pac. 582. The petition did not state a cause of action against the owners of the land."

CONTRACTS MADE BY CITY NOT WITHIN PROVISION AS TO IMPAIRMENT OF CONTRACTS.—In City of Helena v. Helena Light & R. Company, 207 Pac. 337, decided by the Supreme Court of Montana, the rule is stated that a city cannot assert, as against the state, that its contracts are protected by the provision of the Federal Constitution against the impairment of the obligation of contracts.

"If, then, the right of the city to grant this franchise was subject to legislative restriction, as we hold that it was, the city cannot remove such right from the power of state regulation and control by merely designating the accepted franchise a contract, for the contract carries with it all the infirmities of the subject-matter. Hudson County Water Co. v. McCarter, 209 U. S. 349, 28 Sup. Ct. 529, 52 L. Ed. 828, 14 Ann. Cas. 560. Neither can the city insist that its contract with the railway company is inviolable, protected by the contract clause of the federal Constitution or by section 11, art. 3, of our state Constitution. Speaking generally, a municipal corporation does not stand in a position to assert as against the state the benefit of the constitutional provision against the impairment of the obligation of contracts. (New Orleans v. New Orleans Water Works Co., 142 U. S. 798, 12 Sup. Ct. 142, 35 L. Ed. 943), although the state may preclude itself from exercising its reserve power by authorizing the municipality to contract with a public utility for a given service for a definite period."

CIRCUMSTANTIAL EVIDENCE

Every State has murder trial cases such, that if the proceedings were published in full, they would be entitled to be classed among Causes Celebrae.

Very recently Oregon had such a case, and as every particle of the testimony relied on by the State was circumstantial and expert, a brief report of the trial may be of interest and of assistance to the young struggling beginner battling against seasoned expert prosecutors, who have become hardened in the work and thoroughly imbued with the notion that whenever a person is arrested and charged with crime, the chances are greatly against his innocence.

The case of the State of Oregon vs. John L. Burns was such a case:

On June 14, 1921, Buck Phillips was murdered in Multnomah County, Oregon, by two "somebodies" acting jointly. The facts were about as follows: Prior to June 14, 1921, the O. W. R. & N. Ry. Co's cars had been frequently robbed of such articles as groceries, cigarettes and cigars, and the number of robberies showed great activity on the part of persons who were not continuously engaged in legitimate enterprises, and to break up these robberies and to apprehend the criminals, the Railway Company employed Buck Phillips and Herman Snyder as "Specials' to apprehend and capture the "night workers." They were regularly deputized as officers of the law. On the night of June 14, 1921, while in line of duty, Phillips was killed by two "somebodies", said to be endeavoring to break into a car when apprehended.

The shooting was at 10:00 P. M., and on low ground, with high water all around the R. R. tracks, and with a low fog hanging over the region, with one-half moon nearly or quite obscured by clouds—and occasional mists or light showers; in fact, the night was quite dark. On one of the flat cars was a man by the name of Patterson, sneaking a ride, who pretended to have seen two tall men pass along near him as he sat on the car, whom afterwards, he claimed to be able to identify, and they were the men charged with the murder, to-wit, one Dan Casey and John L. Burns.

On the morning following the fatal shooting, a sheriff's posse, accompanied by Patterson, went to the scene, and there trailed blood for several hundred feet, and picked up three 38 Colt special cartridges.

On the afternoon of June 17, a raid was made on the hotel conducted by John L. Burns, and Dan Casey and John L. Burns were both arrested.

Casey had been shot, the ball entering at the wrist bone of the right arm, and coming out four inches up and on the inside of the arm between the radius and ulna, and in line with the extended arm a bruised spot appeared on his body, showing where the ball struck but did not penetrate. Two revolvers, 38 Colt specials, were found in the raid, one in Casey's room wrapped up in a newspaper, and one under Burns' pillow. Both guns had blood stains on them, and when analyzed, was pronounced human blood, by the experts; a pillow, on which there were blood stains, was also found in Casey's room.

Casey was put to trial first; was convicted and now is under sentence of death, with an appeal pending.

The three 38 special Colt empty shells that were picked up on the morning following the homicide were placed in the hands of an expert, ditto the two revolvers.

The ball that killed Phillips passed through his stomach, and the fleshy or soft part of the back, and dropped down in his clothes, and was found by the officers. On the side of this ball, when enlarged by photography, was discovered a peculiar mark or abrasion; the shells that were picked up in the Railroad yards near the scene of the homicide, when photographed, and the photographs when en-

larged, were found to possess a peculiar mark at the cap, or on the exploded cap, and claimed and shown by the expert to be peculiar to all shells, fired in experimental tests, from the John L. Burns' gun, and any and all balls passed through the barrel of this gun on experimental tests showed a mark peculiar to the mark on the ball taken from the clothing of Mr. Phillips,—the man who was killed on the evening of June 14, at the side of the box cars, a few miles out from Portland.

The ball tests and shell examinations were made by an expert by the name of Craddock. The ball tests were made by shooting into soft pork and bran, and also by driving balls through the gun—then the balls and shells photographed, and the photographs enlarged, and these compared with the shells found at the scene of the shooting and the ball that passed through the body of Phillips.

The expert gave it as his opinion, that the fatal ball was fired from John L. Burns' 38 Colt Special Revolver.

The testimony of Patterson, the man who was stealing a ride,—sitting on a flat car at the time of the shooting,—was to the effect, "that two street lamps one-half mile distance added to the light of the moon; that the reflection on the water around the Railroad tracks produced an appearance akin to that of a looking glass, and aided by this reflected light, he recognized Burns as one of the men who passed along the Railroad track about three feet from him just prior to the shooting."

With reference to Patterson's testimony, the attorneys for John L. Burns argued to the jury that object reflected on water always appeared "head down" consequently Patterson was dreaming, or frightened, or suffering from enlarged imagination.

The wife of Burns accounted for the blood on the pillow by claiming the pillow was one used by her in a case of child birth a few months prior to the homicide.

The defendant showed by testimony of men who made experimental tests at the scene of the murder, under conditions as near as possible as the conditions of the night of June 14, and found that on a dark night, a person could not be seen so as to distinguish features at a distance of, or not to exceed two feet.

This expert testimony went to the jury for and on behalf of the defendant.

There were some sensational features in the case during the introduction of the testimony and argument, and the closing scenes in the jury room, such as a fainting woman juror at the moment she changed her vote from "guilty" to a vote of "not guilty."

The foregoing gives sufficient information for a very complete understanding of the case.

Relative to instructions the defendant requested the Court to instruct the Jury on Circumstantial Evidence as follows:

a. "That every circumstance which is relied on by the State, must in itself be proven beyond all reasonable doubt.

b. "The circumstances when proved beyond reasonable doubt must establish, to a moral certainty, the particular hypothesis attempted to be proven by them.

c. "The circumstances which are proved beyond a reasonable doubt must not only support the particular hypothesis which the State intend they shall support, but they must not support any other hypothesis.

d. "The evidence must be such as to exclude, to a moral certainty, every hypothesis but that of the guilt of the defendant."

And for these instructions on Circumstantial, we cite:

First Starkies Evidence—
Pages 422, 446 and 447 (5 Am. ed.).
Wills on Circumstantial Evidence—
Page 187.
Best on Presumptions—
Page 282.

The Court refused the foregoing, and instructed the Jury as follows:

"Circumstantial evidence is that which tends to prove the fact in dispute by proving another fact, which fact, though true, does not of itself conclusively establish the fact in dispute, but which affords

an inference or presumption of its existence.

"Where the proof of guilt rests upon circumstantial evidence for conviction, the jury must be satisfied beyond a reasonable doubt that crime was committed by the defendant in manner and form as charged in the indictment.

"The proof supplied by circumstantial evidence must be not only consistent with defendant's guilt, but also inconsistent with his innocence. It is not sufficient that the circumstances account for, and render probable the theory of the State, but they must exclude to a reasonable and moral certainty every rational theory other than the one of defendant's guilt, or else you must acquit the defendant. The circumstances must be established by direct evidence, and the inferences, if any, must be based upon the circumstances so established, and not upon another inference."

The case was vigorously prosecuted by deputies District Attorney Joe Hammersly and Mr. Mowry, assisted by Elton Watkins and Morris Crumpacker,—all able men, and defended by Hon. B. F. Mulkey and D. C. Lewis.

During the argument on part of the State, the State's Attorney dramatically seized the Burns' revolver and holding it high in one hand pointed to it with his lone fore-finger and exclaimed: "There is where the blood of Phillips stained this stolen revolver! There sits the man (pointing to Burns) who had it and wickedly used it; it was his trembling finger that pressed the trigger that caused the explosion that sent the deadly leaden bullet crashing into the body of Buck Phillips!"

B. F. Mulkey, for the defendant, brought forth Dante and Shakespeare to aid him in ridiculing the State's expert witnesses and circumstantial testimony, and they did their part well.

D. C. Lewis, for the defense, closed with a word picture as to the results of a verdict of guilty; the death sentence by the Court; the last trip of Wife, Mother and Children to the penitentiary, and the farewell scene, quickly contrasted with the results of a verdict of not guilty.

The verdict of "Not Guilty" was regarded as a great legal and forensic victory and was followed by much newspaper discussion. Thus ended one of Oregon's most famous and sensational murder trials.

Should men charged with murder suffer the death penalty on circumstantial testimony alone?

One of the men—Dan Casey—convicted on identically the same testimony that was introduced against Burns is now awaiting the action of the Supreme Court, his sentence being that of death by hanging.

D. C. LEWIS.

Portland, Oregon.

MASTER & SERVANT—STRIKE LEGISLATION.

BIERSACH & NEIDERMEYER CO. v. STATE

188 N. W. 650.

Supreme Court of Wisconsin, June 6, 1922.

St. 1919, § 1729p1, requiring advertisement for workmen to state existence of any strike at the place of proposed employment, is not class legislation, being based on a reasonable classification, and germane to the purpose to protect the public.

Biersach & Neidermeyer Company was convicted of violating St. 1919, § 1729p1, and brings error. Affirmed.

This case comes to this Court on a writ of error to review an order of the municipal court for Milwaukee county, A. C. Backus, Judge, overruling the demurrer of the defendant to the information, and to review the judgment of said Court in and by which the defendant was found guilty of violating section 1729p1 of the Statutes of Wisconsin for the year 1919, and sentenced to pay a fine and costs.

The information charged the publication of the following advertisement in the Milwaukee Journal, viz.:

"Tinners—Experienced in lining fire doors; good wages permanent position guaranteed to good men. 220 5th St."

The information charged that prior to and at said date the defendant had labor trouble at its plant, and that a strike existed among the sheet metal workers, tinners, and laborers of the defendant, and charged that the defend-

ant violated the provisions of the statute aforesaid in failing to state in such advertisement the fact of the existence of said strike.

A demurrer was interposed to test the constitutionality of said section of said statute, defendant claiming that the same was repugnant to section 1, Article 1 of the Constitution of the state, and to the Fourteenth Amendment of the federal Constitution, and defendant gave notice that it would rely upon such claim.

Lamfrom & Tighe, of Milwaukee (Leon B. Lamfrom and Kenneth P. Grubb, both of Milwaukee, of counsel), for plaintiff in error.

Wm. J. Morgan, Atty. Gen., and Winfred C. Zabel, Dist. Atty., and George A. Shaughnessy, Asst. Dist. Atty., both of Milwaukee, for the State.

DOERFLER, J. [1] Section 1729p1 of the Statutes provides:

"It shall be unlawful to influence, induce, persuade or attempt to influence, induce, persuade or engage workmen to change from one place of employment to another in this state or to accept employment in this state or to bring workmen of any class or calling into this state to work in any department of labor in this state, through or by means of any false or deceptive representations, false advertising or false pretenses concerning the kind and character of the work to be done, or amount and character of the compensation to be paid for such work, or the sanitary or other conditions of the employment, or failure to state in any advertisement, proposal or contract for the employment that there is a strike or lockout at the place of the proposed employment, when in fact such strike or lockout then actually exists in such employment at such place. Any of such unlawful acts shall be deemed a false advertisement, or misrepresentation for the purposes of this section."

Plaintiff in error claims among other things that the statute in question provides for an improper classification, and that it is class legislation. In order that the classification may be valid it must rest upon some real difference in the subject-matter having some relation to the classification made and the objects to be accomplished by the legislation, and must affect alike all persons or things within a particular class. 12 C. J. 1130.

In this connection it is said that employers of workmen are placed in one class and are required in the event of a strike or lockout, while advertising for men, to state in the advertisement the fact that such condition exists; and that employers of other workmen, such as clerks, stenographers, telephone operators, etc., are at liberty to advertise for help during the existence of a strike or lockout, without being required to make reference to the fact of the existence of such labor troubles. It is a well-known fact that the labor troubles referred to in the statute contemplate the existence of such trouble in relation mainly to workmen, and by workmen are meant persons employed in manual labor in various avocations where such labor is required, and particularly to those employed in industrial labor.

Courts also can and must take notice that efforts on the part of employers to hire labor to take the place of strikers or those locked out from employment are frequently connected with acts of violence, blood shed, and breaches of the peace. The existence of lawlessness under conditions as above stated was clearly in the mind of the legislators at the time of the enactment of the statute, and it was the evident intention of the Legislature to meet such situation and to provide protection for the benefit of the public. Without the provisions of this statute, employers who had labor troubles could indiscriminately advertise for help without apprising the prospective employees of actual conditions, as the result of which many would leave their homes and travel long distances, only to find that a strike or lockout existed in the plant, which would make employment uncomfortable. to say the least, and in many instances dangerous. So that in the enactment of the statute it must be assumed that the Legislature had a clear, well-defined policy in mind, designed to protect the interests of the public in general.

Can it be said, therefore, that the classification effected by the statute is an improper or invalid classification? While it appears to us that there is little room for debate as to the propriety or validity of the statute or the classification, if the subject were one debatable or one upon which the minds of reasonable and honest men might differ, there would be no authority in the courts to hold such legislation or classification as unreasonable.

As is said in State ex rel. Kellogg v. Currens, 111 Wis. 431, 438, 439, 87 N. W. 561, 564 (56 L. R. A. 252):

"The reasons for a given statute are for the Legislature, if there are any which can fairly have weight. They are not for the courts. The latter have no control over the validity of the laws unless they can say with substantial certainty that no argument or consideration of public policy exists which could have weight with any reasonable and honest man. If any such argument or reason can be suggested, its weight or sufficiency is not debatable in the courts. * * * It is from such considerations as these that the courts have laid down for themselves the rule that only in a clear case—clear beyond reasonable doubt—will they venture to assert that a law is without reason to support either its purpose or the classifications it may make." (Numerous decisions cited.)

Applying therefore the test referred to in the reference from Corpus Juris, it follows that the classification rests on real differences in the subject-matter, and is germane to the purpose of the law, such purpose being to protect the public from the inconvenience, expense, and danger in responding to such advertisements.

The requirement of the statute with respect to the advertisement operates equally on all within the same class, and is therefore valid. This is true, as is stated in 12 C. J. 1128, 1130, even though the act confers different rights or imposes different burdens on the several classes.

Counsel for plaintiff in error cites the case of Mathews v. People, 202 Ill. 389, 67 N. E. 28, 63 L. R. A. 73, 95 Am. St. Rep. 241, and states in his brief:

"The statute in that action established free employment agencies to be maintained at public expense. It forbids those in charge, however, to furnish help to persons whose employees were on strike or lockout. * * * The Court held this statute to be void as discriminating between two classes of employers, as depriving applicants of the privilege of working for such employers and as interfering with the freedom of contract."

This case materially differs rrom the instant case. Under the statute in the instant case there is no interference or restriction with respect to the right of the plaintiff in error to contract for any kind of labor he may see fit. The statute merely requires that in advertising for labor he shall state the truth with respect to the existence of a strike or a lockout, so that persons applying for employment may be governed accordingly. All employers of workmen are treated alike, and are subject to the same requirement.

[2] Counsel for plaintiff in error also contends that the statute in question is repugnant to the provisions of the Fourteenth Amendment of the federal Constitution, in that it denies to his client the equal protection of the laws, and in support of that contention cites from the decision of the Supreme Court in Re Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 22 Sup. Ct. 431, 46 L. Ed. 679, as follows:

"The Fourteenth Amendment, in declaring that no state 'shall deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there shall be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights."

With the law as thus laid down we can have no quarrel. Under this decision the right of classification is clearly recognized both as to employers and employees, and where, as in the instant case, equal protection and security is given to all under like circumstances in the enjoyment of their personal and civil rights, by treating all within the classification alike, the Fourteenth Amendment is not violated.

The constitutional questions involved in this case were raised under a statute almost identical with our own, in Massachusetts, in the case of Commonwealth v. Libbey, 216 Mass. 356, 103 N. E. 923, 49 L. R. A. (N. S.) 879, Ann. Cas. 1915B, 659, and were decided favorably to the constitutionality of the statute. The matters are somewhat extensively treated in the case cited, and we approve of the logic of that decision. The ame may also be said of the case of Riter-Conley Mfg. Co. v. Wryn (Okl. Sup.) 174 Pac. 280, 11 A. L. R. 859.

We must therefore hold that the statute in question is constitutional, and that the order and judgment of the lower court must be affirmed.

It is so ordered.

NOTE—Validity of Statute Requiring Advertisement for Workmen to State Existence of Strike.—In addition to the case reported above, there is the case of Oeflein v. State, Wis., 188 N. W. 633, which involves the same statute. This case holds that the statute only requires notice of strike in craft specified in the advertisement for labor. Also, that cessation of work without demand on the employer is not a "strike," within the meaning of the statute.

BOOK REVIEW.

UNIFORM LAWS, ANNOTATED.

VOL. 1, SALES ACT.

This volume is the first of a series known as Uniform Laws, Annotated, a series designed to render of easy access to the profession the most recent accomplishment in the development of legal jurisprudence. It is edited by H. Noyes Greene, assisted by the editorial staff of the publishers, Edward Thompson Company.

The need for uniformity of legisla'ion on subjects of common interest throughout the United States led to the organization in 1892 of the National Conference of Commissioners of Uniform Laws. The Commissioners composing the Conference are appointed by legislative or executive authority from the States, the District of Columbia, the Territory of Alaska and the island possessions of the United States. Annual meetings of the Conference are held in connection with the meetings of the American Bar Association. Proposed acts when finally ap-

proved by the Conference are submitted to the American Bar Association and recommended for general adoption throughout the jurisdiction of the United States. Twenty-four of such acts have been adopted in the various States. Every State in the Union has adopted one or more of the laws. Several of the States have adopted most of them and most of the States have adopted the more important ones.

This set will contain all the Uniform State laws approved by the National Conference Commissioners and adopted by the various states, including all amendment to the close of the Legislative Sessions of 1921. The most important and generally adopted laws are each given a separate book in this section, thus carrying out so far as possible a plan of "one law, one book." Each book of the series is so constructed that it may be separately kept up to date by an annual cumulative supplement in pamphlet form, stitched to a stiff paper tongue that fits into a pocket in the back of the book and opens as though it were a part of the book as originally bound—a patented device used on law books published by this firm.

The Annotations are of three distinct kinds: Commissioners' Notes—made and appended to each section of each act by the Conference Commissioners themselves. Statutory Notes—compiled by a line-to-line comparison of the acts as adopted by the Conference Commissioners with the same acts as re-enacted in the different jurisdictions. Case Notes—prepared by the editorial staff of the publishers. In the case notes the decisions are classified as direct and indirect, the former consisting of cases expressly citing and construing a Uniform Act, and the latter consisting of cases which make no reference to the act, but the facts of which bring them within the application of the act both as to time and subject matter.

The books comprising this edition are arranged and numbered as follows: 1. Uniform Sales Act; 2. Uniform Conditional Sales Act; 3. Uniform Warehouse Receipts Act; 4. Uniform Bills of Lading Act; 5. Uniform Negotiable Instruments Act; 6. Uniform Stock Transfer Act; 7. Uniform Partnership Act; 8. Uniformed Limited Partnership Act; 9. Miscellaneous.

Judge Priest—"Parson, that turkey you sold me yesterday wasn't a tame one as you claimed it to be, for I found shot in it."

Parson Brown—"Judge, dat was a tame turkey jest like I sed it was; dem shot was meant for me."—Judge.

ITEMS OF PROFESSIONAL INTEREST

1922 MEETING OF MONTANA BAR ASSOCIATION

The annual meeting of the Montana Bar Association was held at Hunters Hot Springs, August 18th and 19th.

The meeting was called to order by Judge E. K. Cheadle, of Lewistown, the president of the association, who delivered one of the most impressive addresses ever heard by the association. Judge Cheadle departed from the usual custom of the presidents of our association by delivering an extemporaneous address instead of reading one. The judge is one of the real orators of Montana and amply justified his reputation as such on this occasion.

Hon. W. B. Rodgers, of Butte, presented suitable resolutions relative to the voluntary retirement of Hon. Theodore Brantley from the office of Chief Justice of the Supreme Court of Montana after twenty-four years of continuous service in that office.

Addresses were delivered by Prof. H. M. Colvin, of the University of Montana law school, Nils P. Haugen, tax expert of the State Board of Equalization, John T. Smith, of San Diego, Cal., formerly of Livingston, H. H. Parsons of Missoula, and Hon. Albert J. Galen Associate Justice of the Supreme Court of Montana, the latter giving a most interesting account of his experiences overseas in the world war, where he was advanced to the rank of Colonel in the Judge Advocate General's department.

One of the noteworthy features of the convention was the address of Mrs. Mabel Walker Willebrandt, Assistant Attorney General of the United States, who arrived from California just at the close of the sessions and delivered a most able address on the subject: "Safeguarding the Growth of the Law". Mrs. Willebrandt possesses a most charming personality, notwithstanding her professional training, and impressed us as possessing ability which would be considered unusual in one of our own sex, possibly not to be so esteemed elsewhere.

The reports of the officers showed the association to be in a most prosperous condition, comparatively at least, the membership having doubled during the past year

Judge C. A. Taylor, of Billings, was elected president for the coming year and Thos. F. Shea, of the same place, secretary-treasurer. Hon. Walter S. Hartman of Bozeman, presided at the annual banquet.

BURTON R. COLE,
Lewistown Montana. Secretary-Treasurer.

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Adverse Possession**—Insurance.—In an action upon a farm automobile policy, insuring a certain Ford roadster No. 2,973,641 against loss by theft, the principal defense was that the car was not the property of the plaintiff. The defendant's evidence showed that a car of the same description and make, bearing the same factory number, was purchased from the factory long prior to the issuance of the policy, and was then in the possession of the purchaser in New York City. Held, that the number of the car stated in the policy was a mere matter of description; it was the particular car which the defendant insured and not the number; and held further, that the court properly refused to instruct that, even if the jury believed from the evidence that plaintiff owned the Ford motor car when the policy was issued, they must find for the defendant, unless they believed from the evidence that the car bore the number stated in the policy.—Harpey v. Missouri Pac. R. Co., Kan., 207 Pac. 761.

2. **Attorney and Client**—Fees.—Under the court's inherent power of control over attorneys to compel performance of their obligation, it may by summary order, in an action in which a party deposited money with his attorneys to secure the referee's fees, require them to pay it over to the other party, who by subrogation is entitled to it, having paid the referee's fees in order to secure his report.—Sherman v. Yankee Products Corporation, N. Y., 194 N. Y. S. 705.

3.——Fees—Children who employed attorneys to institute proceedings for the interdiction of their mother for 5 per cent of the total amount of the inventory if successful held not to have incurred any personal liability for the attorney's fees.—Lazarus, Michel & Lazarus v. Veazey, La., 92 So. 338.

4. **Automobiles**—Conditions.—Under an automobile collision insurance policy, providing that in case of disagreement damages must be determined "before recovery can be had," and that the sum for which the company is liable shall be payable 60 days after receipt of proof of loss, etc., "including an award by appraisers when appraisal is required," an appraisal is not a condition precedent to plaintiff's right to recovery.—Williams v. Hamilton Fire Ins. Co., N. Y., 194 N. Y. Supp. 798.

5.——Contributory Negligence.—In an action for injuries by one alighting from a street car and passing behind the car upon the adjoining track, where he was struck by an automobile driving on the track because of snow on both sides of the tracks, evidence held to show that his failure to see the automobile in time to avoid being struck was due to his carelessness.—Gibb v. Hardwick, Mass., 135 N. E. 868.

6.——Crossings.—The driver of an automobile, approaching a street intersection, is not bound to anticipate that another driver coming from the right will fail to slow down for the intersection as required by chapter 391, Laws 1919, and is not guilty of negligence as a matter of law, if he proceeds after seeing the other driver coming at a high rate of speed and then 100 or 150 feet away.—Soderberg v. Taney. Minn., 188 N. W. 993.

7.——Highways.—In an action for injury to a mare run down by an automobile, an instruction that, if the jury found defendant, while driving on the public highway, overtook her, and while attempting to pass negligently and carelessly drove at such rate of speed as to run against and injure her so that she had to be killed, the verdict should be for plaintiff, was proper where defendant admitted he saw the mare some distance before he struck her, and continued at a high rate of speed, thinking she would get out of the way.—Shelton v. Rudd, Mo., 242 S. W. 151.

8.——Hirer Liable.—Where the owner rents an automobile to be operated by the employees of the hirer over whom the owner has no control, he is not liable for the negligence of such employees.—Rhodes v. Bonde, Minn., 188 N. W. 1002.

9.——Liability.—An automobile driver is liable if he puts himself in a position where, in order to save himself from a collision, he must run into some one else.—Southall v. Smith, La., 92 So. 402.

10.——Liability.—Assuming that the driver of the automobile failed to exercise due diligence to stop before attempting to cross the railroad track in order to discover whether there was a car or train approaching, the deceased, being a mere guest of the driver, was not, as a matter of law, negligent in failing to observe the approach of the car, or failing to insist that the automobile be stopped, in order to ascertain whether the car was approaching.—Bradshaw v. Payne, Kan., 207 Pac. 802.

11.——Negligence.—The negligence of the driver of an automobile in approaching a railroad crossing without slackening his speed, and in attempting to beat the train across, does not defeat recovery for the death of one riding in the automobile as his guest, unless the circumstances were such that deceased could be charged with negligence of his own.—Churchill v. Texas & Pac. Ry. Co., La., 92 So. 314.

12.——Negligence.—Where the driver of an automobile and a person accompanying him are not engaged in a common enterprise, and the situation is such that due diligence requires the driver to stop before attempting to cross a railroad track to assure himself that no train is approaching at a dangerous distance, the person accompanying him is not negligent as a matter of law in failing to see that such stop is made.—Kessler v. Davis, Kan., 207 Pac. 799.

13. **Bankruptcy**—Inurements.—Under Code Iowa, § 1805, providing that a life insurance policy shall inure to the separate use of the husband, or wife and children, of insured, independently of his creditors, and making similar provisions concerning the proceeds of an endowment policy and other policies, a life insurance policy payable to the wife of insured is exempt, notwithstanding a provision in the policy permitting insured to change the beneficiary, and the trustee in bankruptcy is not entitled to the cash surrender value of the policy.—Jens v. Davis, U. S. C. C. A., 280 Fed. 706.

14.——Jurisdiction.—It is beyond the power of a court in bankruptcy to expunge from the debts scheduled by the bankrupt, as required by Bankruptcy Act, § 7 (8) being Comp. St. § 9591, a debt which would not be released by the discharge in bankruptcy.—In Re Bernard, U. S. C. C. A., 280 Fed. 715.

15.——Priority.—Unpaid freight charges for shipments by railroad during federal control are property of the United States, and a claim therefor is entitled to priority, under Bankruptcy Act, § 64b (5), being Comp. St. § 9648, and Rev. St. § 3466 (Comp. St. § 6372).—In Re Tidewater Coal Exchange, U. S. C. C. A., 280 Fed. 648.

16.——Right to Vote.—Bankruptcy Act, § 56b (Comp. St. § 9640), providing that "creditors holding claims which are secured or have priority shall not, in respect to such claims, be entitled to vote at creditors' meetings," merely limits a right given solely by the statute, and does not deprive a creditor of any right, and under such provision the United States, as a creditor having priority, held not entitled to vote at a meeting for appointment of trustee.—In Re Tidewater Coal Exchange, U. S. C. C. A., 280 Fed. 648.

17.——Trustee.—If trustee in bankruptcy, for the wrongful purpose of destroying the lien of holders of bankrupt's note secured by deed of trust on land obtained possession of bankrupt's note secured by prior deed of trust on the same land, knowing it had been paid, and caused land to be sold under such prior deed of trust, and, after purchasing land at such sale, caused it to be sold at a trustee's sale, and, under collusive agreement with purchaser, purchaser quieted title in action by process calculated to escape actual knowledge by holders of such other note, the trustee's surety was liable to such holders, regardless of whether trustee acted solely for the benefit of the bankrupt's estate, or in part for personal advantage under color of his office.—United States v. Perkins, U. S. C. C. A., 280 Fed. 546.

18.——Unincorporated Company.—The Tidewater Coal Exchange was an unincorporated association formed during the war, at the instance of the Council of National Defense, to expedite the transshipment of coal at tidewater points and the release of coal cars. Its members were tidewater coal shippers and consignees, and included individuals, corporations, and partnerships. It had no constitution, articles of association, or by-laws, no capital stock, made no charge for membership, and collected no fees, but adopted rules and operated under direction of a commissioner and an executive committee, and its expenses were paid by the railroads and government Railroad Administration. Held, that it was an "unincorporated company," within the meaning of Bankruptcy Act, § 4b (Comp. St. § 9588), and subject to adjudication as a bankrupt.—In Re Tidewater Coal Exchange, U. S. C. C. A., 280 Fed. 638.

19. **Banks and Banking**—Agency.—Where the president of a bank purchased cotton from defendant and agreed to deposit part of the proceeds in the bank to defendant's credit to offset defendant's overdraft which, he stated to defendant, amounted to $5,165.85, the bank was liable to the defendant for that sum, where the president deposited the proceeds to his own credit, although defendant's overdraft at that time was actually only $2,165.85; the president having authority to collect money due the bank.—Hull v. Guaranty State Bank, Tex., 242 S. W. 189.

20.——Commerce.—Where, as found by the jury, the sale of foreign currency by a bank was within the scope of ordinary banking business, it did not violate Rev. Laws, c. 115, § 38, forbidding banks organized under that chapter to use their moneys, etc., in trade or commerce.—Federal Trust Co. v. State Bank, Mass., 135 N. E. 878.

21.——Increased Capital.—Under a contract with stockholders to increase the capital stock of a bank and to sell part of the new stock to certain parties if satisfactory to all the stockholders, and approved by them, there is no liability for failure to sell to the parties with whom the contract is made, nor for voting not to comply with the contract when it is objected to and disapproved by some of the stockholders.—Hoag v. Kuiken, Kan., 207 Pac. 646.

22.——Insufficient Funds.—All the elements of the offense being present, the maker of check is not relieved from punishment by the fact he told the payee, when check was issued, he had no funds in the bank to meet it.—State v. Avery, Kan., 207 Pac. 838.

23. **Bills and Notes**—Consideration.—Where auto truck was sold, and in payment, in addition to a judgment note, there was given a promissory note, due in three months, for which the maker, with full knowledge of defective condition of the truck, executed a renewal note, by such renewal the defense of failure of consideration was waived.—Longacre v. Robinson, Pa., 117 Atl. 408.

24.——Drawer Liable.—Where the son of a treasurer of a corporation drew a draft on the corporation to pay his own debt, on expectation that his father would repay the corporation for the draft, on the payment of the draft by the treasurer out of the funds of the corporation, which was not reimbursed, the drawer of the draft was liable for the amount so paid.—Martindale v. Evans, N. Y., 194 N. Y. S. 709.

25. **Brokers**—Commission. — Where defendant agreed to divide with plaintiff all over a certain amount for selling his membership in a hay dealers' association, and plaintiff produced a purchaser, who paid for it, and defendant indorsed the certificate over to the purchaser, he is liable for the commission, as there was a completed sale, though the membership was not transferred on the books and the purchaser did not comply with the by-laws and defendant bought it back.—Haak v. Fowler, Mo., 242 S. W. 118.

26.——Lien.—Where a broker was given the exclusive right for a certain period to manage, hold, and control real estate, and to sell the property under an agreement giving him half the proceeds in excess of the incumbrances by way of mortgage, interest, and taxes, and during such period expended certain amounts to avoid foreclosure, and procured a purchaser, who thereafter, with intent to defraud him, purchased property directly from the owner, with knowledge of his contract with owner, the broker was entitled to an equitable lien on the property for the amount expended by him and his share of the proceeds.—Baker v. Cooper, N. Y., 194 N. Y. S. 726.

27. **Carriers of Goods**—Market Value.—In shipper's action against railroad for conversion of coal during transportation in which the evidence showed that the coal had a market value at the point of destination, admission of testimony as to the market price of coal at other places held error.—Zimmern v. Southern Ry. Co., Ala., 92 So. 437.

28.——Title.—When freight has been received by a carrier for shipment, it becomes the property of the consignee or holder of the bill of lading, and its value to him is the test of liability of the railroad company for negligence in case of misdelivery, and, though the bill of lading be not regarded technically as a stipulation pour autrui, the carrier is bound not to cause loss to the consignee by its negligence.—C. H. Rice & Son v. Payne, La., 92 So. 395.

29. **Carriers of Live Stock**—Loading.—A shipper who agrees to load live stock at his own risk, and who overloads the cars, cannot recover against the carrier for losses which would not have occurred but for the overloading.—Spence v. El Paso & S. W. Co., N. M., 207 Pac. 579.

30. **Carriers of Passengers**—Contributory Negligence—Where plaintiff, a young woman, 18 years of age, familiar with the movements of street cars, and in full possession of her faculties, stepped from a street car while it was running at the rate of 18 miles per hour, she was guilty of such contributory negligence as precludes a recovery where it does not appear that she was excited, or was confronted with any emergency or peril, or that her attention was diverted.—Kirby v. United Rys. Co., Mo., 242 S. W. 79.

31.——Liability.—No duty rests on the conductor of discovering that a passenger on the platform of a car and about to alight has a hand on the jamb of the door and seeing that the door is not allowed to close while her hand is there.—Polis v. Philadelphia & R. Ry. Co., Pa., 117 Atl. 415.

32.——Liability.—When a railroad company should anticipate a greater number of passengers than its usual quota of coaches will reasonably accommodate, it is the carrier's duty to put on sufficient coaches to provide the passengers with seats, and a failure to perform that duty renders the company liable for any injury suffered by passengers as a proximate result of the crowded condition of the coach.—Hatfield v. Payne, Ky., 242 S. W. 32.

33.——Passenger.—A person who, intending to board a train and become a passenger thereon, was injured while in the act of mounting the steps of the train, was a "passenger" within the definition that one is a passenger from the time he puts himself in the care of the carrier or directly within the carrier's control with the bona fide intention of becoming a passenger and is accepted as such by the carrier.—Riley v. Southern Pac. Co., Cal., 207 Pac. 699.

34. **Commerce**—Tax.—In view of Lacey Act, § 242 (U. S. Comp. St. § 10412), making it unlawful to transport or deliver to a common carrier for transportation the dead bodies or parts of any wild animals or birds killed or shipped in violation of state laws, Act No. 135 of 1920, imposing a tax on hides and skins of wild fur-bearing animals or alligators to be paid before shipment from the state, does not violate the commerce clause of the federal Constitution or the Interstate Commerce Law (U. S. Comp. St. § 8563 et seq.) as levying tax on exports.—Lacoste v. Department of Conservation, La., 92 So. 381.

35. **Constitutional Law**—Contract.—During the time the Court of Industrial Relations was vested with the duties and functions of the Public Utilities Commission, that court, and the commission prior to and subsequent to that interval, had power to set aside and change the rate for natural gas furnished to the inhabitants of the city of Winfield, notwithstanding the city's objection thereto, and notwithstanding the existence of a contract between that city and the party which supplied the natural gas, which contract had been made and promulgated by a city ordinance prior to the enactment of the Public Utilities Law; and, whatever might be urged against the impairment of such contract by the other party thereto, the changes in the rates and service by order of the state tribunal did not, as against the city, violate the contract clause of the federal Constitution.—City of Winfield v. Court of Industrial Relations, Kan., 207 Pac. 813.

36.——Jurisdiction.—The authority to pardon or parol is vested in the executive department of the government, and the judiciary have no right to usurp this power.—People v. Fisher, Ill., 135 N. E. 751.

37.——Irrigation Districts.—Laws 2d Sp. Sess. 1915, c. 8, and Laws 1921, c. 149, providing for the organization of irrigation districts and giving the county board of supervisors power to hold elections concerning the organization of irrigation districts, are not unconstitutional as giving the board legislative powers in the creation of corporations.—In Re Auxiliary Eastern Canal Irr. Dist., Ariz., 207 Pac. 614.

38.——Measure.—The provision of Fruit and Vegetable Standardization Act, § 7, that the standard basket for strawberries shall be the dry pint, though the same section permits half-pint baskets for other berries, is not unreasonable or discriminatory, since it is a matter of common knowledge that strawberries are larger and of more irregular shape than other berries, so that the sale in small containers would be detrimental to the purchaser, and since the pint and half-pint containers had the same surface area, the difference being in their depth, which is not observable when the baskets are packed, as they usually are, in six-basket trays.—Ex Parte Fujii, Cal., 207 Pac. 537.

39.—Road District.—A statute creating a road improvement district does not delegate legislative power to the county court by providing that the act shall not become effective until approved by a vote of the landowners at an election to be held at the time and place fixed by the county court.—Capps v. Judsonia-Steprock Road Improvements Dist., Ark., 242 S. W. 72.

40.——Theaters.—The term "citizen," as employed in Civ. Code, § 51, declaring "all citizens within the state entitled to the full and equal privileges of theaters," and section 52 thereof, making "whoever denies to any citizen privileges enumerated in section 51," etc., liable in damages for not less than $100, is not restricted to citizens of the United States or of any of the states, but includes unnaturalized residents of foreign birth, white or black, as otherwise these sections would deny equal protection of the laws, guaranteed by Const. U. S. Amend. 14.—Prowd v. Gore, Cal., 207 Pac. 490.

41. **Contracts**—Cancellation. — Where plaintiff contracted to furnish defendant steel, and, in relation to an item amounting to 3 per cent. of the total material called for, wrote defendant, stating that it was impossible to get the steel manufactured, and suggested a substitution, the letter did not, as a matter of law, warrant defendant in treating it as a cancellation of the contract.—Bushnell v. Spearin, N. Y., 194 N. Y. Supp. 788.

42. **Corporations**—Agency.—Though notice to the president of a corporation by its debtor is given to him individually, his knowledge is the corporation's when thereafter he represents it in dealings with such debtor.—John H. Giles Dyeing Mach. Co. v. Klauder-Weldon D. M. Co., N. Y., 135 N. E. 854.

43.——Estoppel.—One whose husband, with special authority from her, participated in the organization of a corporation and the transfer to it of property of the estates of her deceased parents and who accepted stock for her interest and withdrew the surplus above the amount of her subscription, could not thereafter attack the incorporation and withdraw her interest from the corporation.—Peytavin v. John B. Camors, Inc., La., 92 So. 322.

44.——Receiver.—Where a corporation is hopelessinsolvent, it would be futile to have an execution issued against it, and a simple contract creditor may maintain a suit in equity for the appointment of a receiver without being required first to reduce his claim to judgment and issue execution thereon.—Lion Bonding & Surety Co. v. Karatz, U. S. C. C. A., 280 Fed. 532.

45.——Receiver.—That a mercantile company had been losing money and was apparently insolvent, and that claims amounting to about $1,500 were held by attorneys for collection, was not ground for the appointment of a receiver at the suit of a stockholder under Act No 159 of 1898, § 1, par. 2, though it might have authorized a creditor to seek a receivership.—Shelton v. Destrehan Mercantile Co., La., 92 So. 344.

46.——Statute.—Stock exchanged by a South Dakota corporation for stock of another corporation is presumed, where there was evidence that a block of the stock had been issued to its treasurer, and there was no evidence as to the issuance of the stock actually exchanged, to have been stock theretofore lawfully issued by the corporation, so that the exchange did not violate Const. S. D. art. 17, § 8, prohibiting the issue of corporate stocks except for money, labor done, of property actually received —Osage Oil & Refining Co. v. Haller, U. S. C. C. A., 280 Fed. 693.

47.——Subscriptions.—It is not necessary that a corporation be insolvent to entitle it to enforce the liability of its stockholders for the unpaid balance of the par value of stock subscribed for by them.—Geary St., P. & O. R. Co. v. Rolph, Cal., 207 Pac. 539.

48. **Damages**—Market Value.—In an action for damages to plaintiff's automobile, an allegation that plaintiff had been using the car in the business of carrying passeners for hire, and had been deprived of its use in that business, was proper, since the measure of damages was the reasonable market value or cost of the material and labor necessary to repair the automobile and the reasonable value of the use of the automobile during the time it was idle while being repaired.—Plylar v. Jones, Ala., 92 So. 445.

49. **Deeds**—Confidential Relation.—Where a man, 76 years old, in ill health, resided with his sister and her husband on his own farm which he rented to them, the fact that his sister cared for him at times when he was ill, and that he made gifts to his sister, her son, and her husband, and after executing a deed to his farm to his sister and her hus-

band that he gave her husband a power of attorney to satisfy a mortgage, the money from which was kept and turned over to his estate after his death, did not render void because of a confidential relation the deed to his farm to his sister and her husband, which was executed in their absence, after it was fully explained to him.—Leedom v. Palmer, Pa., 117 Atl. 410.

50. **Election of Remedies**—Endowment Association.—Where an endowment association expelled a member, promising to pay him a designated sum, and he gave notice of acceptance and brought suit for the agreed sum, and recovered all the association could legally pay, which was less than the agreed amount, he had elected his remedy, and could not then compel reinstatement.—Farrell v. National Civil Service Endow. Ass'n, N. Y., 194 N. Y. Supp. 682.

51. **Frauds, Statute of**—Acceptance.—Invoice sent buyer, differing in material respects from terms of oral contract, and telegram from buyer to seller, stating that buyer could not accept the car, and subsequent telegram from buyer to seller making seller an offer to compromise, which seller refused to accept, held not to satisfy Personal Property Law, § 85, requiring a contract for the sale of goods of the value of $50 or more to be in writing or evidenced by some note or memorandum signed by the party to be charged.—F. Kieser & Son Co. v. Hallock, N. Y., 194 N. Y. Supp. 737.

52.——Contract.—To establish a complete contract, binding under the statute, from letters, writings, and telegrams, not all of which are signed by the party to be charged, the signed writings must refer expressly to the others, or be so connected therewith, physically or otherwise, as to show by internal evidence that they relate to the same contract; but a paper signed by the party to be charged cannot be incorporated in a paper not signed by him by a reference in the latter.—Western Metals Co. v. Hartman Ingot Metal Co., Ill., 135 N. E. 744.

53.——Contract.—A promise to a debtor for a consideration to pay attorney's fee due from the latter is an original obligation within Civ. Code, § 2794, and need not be in writing.—Garroway v. Jennings, Cal., 207 Pac. 554.

54.——Insurance.—A reinsurance agreement, like an insurance contract, is not within the statute.—National Surety Co. v. Equitable Surety Co., Mo., 242 S. W. 109.

55. **Highways**—Safeguards.—The duty of supervisors to safeguard the public highways and to abate any condition making travel thereon dangerous, extends to require an abatement of a dangerous condition immediately adjoining the highway, at a point where an adjoining owner has a private lane leading to the road.—Lengle v. North Lebanon Tp., Pa., 117 Atl. 403.

56.—Signals.—The provisions of Acts 1911, p. 634, §§ 18 and 19, requiring a motor vehicle approaching an "intersection" where the view is obstructed to give warning, applies to any intersection of highways outside the limits of a city or incorporated village, where the driver on one highway was prevented from seeing a vehicle approaching the same intersection on the other highway, and is not to be construed to apply only to two roads that approach and intersect at right angles.—McCaa v. Thomas, Ala., 92 So. 414.

57. **Insurance**—Conditions.—To constitute "medical attendance," within representations in application for life policy as to medical attendance, it was not requisite that a physician should attend the patient at his home; attendance at his office being sufficient.—Tunnard v. Supreme Council of Royal Arcanum, N. Y., 194 N. Y. Supp. 706.

58.——Rebating.—One who forms an association of highway contractors without capital stock and without profits to itself, with the purpose of writing bonds and indemnity insurance for members of the association, commissions earned by him to be turned into the association and used to pay his salary and expenses of office, thus reducing the dues or assessments against members for whom he writes the insurance, violates Ky. St. § 762a19, relating to rebating, as respects his right to license to write insurance for nonresident companies as their agent.—Lyman v. Ramey, Ky., 242 S. W. 21.

59.——Valid Policy.—A provision in a contract for the shipment of live stock that "the carrier should have the benefit of any insurance effective upon the live stock for injury while in transit, so far as this shall not void the policies of insurance," did not avoid a policy providing that "any act of assured, whether before or after loss, waiving or transferring or tending to defeat or decrease the claim against the carrier, shall render this contract void."—Adams v. Hartford Fire Ins. Co., Ia., 188 N. W. 823.

60.——Warranty.—Pills or tablets prepared by a physician for use in his practice as regulatory potions, and sold without any claim that they are patent or proprietary medicines, are not patent or proprietary, within a warranty in an application for a fraternal benefit certificate that the applicant had not used such medicines for three years.—McHenry v. Royal Neighbors of America, Mo., 242 S. W. 147.

61. **Intoxicating Liquors**—Search and Seizure.—The general term "other vehicle" of Laws 1921 (Ex. Sess.) c. 9, § 26, providing for search and seizure when any officer discovers any person transporting intoxicating liquors in any buggy, etc., or "other vehicle," is limited in its meaning to designate vehicles of the general character of those particularly enumerated.—State v. Mullen, Mont., 207 Pac. 634.

62. **Landlord and Tenant**—Lease.—Where a lease contained a covenant against subletting, with a penalty of forfeiture, waiving a violation thereof by a landlord did not estop him from suing for a subsequent violation of the covenant, since each breach thereof gave rise to a separate and distinct cause of action for a forfeiture.—McCarter v. Davis, N. Y., 194 N. Y. Supp. 688.

63.——Lease.—Existence of roaches, bedbugs, and rats in apartment held not to entitle lessee to vacate apartment before termination of lease on the ground of a constructive eviction, in the absence of a showing that the lessor could have rid the apartment of the roaches, bedbugs, and rats without trespassing upon the lessee's leasehold.—Gunther et al. v. Oliver, N. J., 117 Atl. 402.

64. **Literary Property**—Copyright.—Where no valid copyright has been obtained, a photographer has no exclusive right in the product of his artistic skill.—Lumiere v. Robertson-Cole Distributing Corporation, U. S. C. C. A., 280 Fed. 550.

65. **Master and Servant**—Agency.—A railroad yard watchman, who had been instructed to guard dynamite storage house, held to have acted within the scope of his employment in shooting boy running from watchman after being apprehended while preparing to rob storage house.—Robbs v. Missouri Pac. Ry. Co., Mo., 242 S. W. 155.

66.——Agency.—The evidence sustains a finding that the defendant, Rahart, who was driving an auto owned by the defendant company, was not in the employ of the company nor engaged in the authorized use of the car when the plaintiff was injured through his negligence.—Piepho v. M. Sigbert-Awes Co., Minn., 188 N. W. 998.

67.——Compensation.—Under section 9, c. 14, Sess. Laws 1919, providing for compensation for loss of hearing in an amount to be determined by the Industrial Commission, but not in excess of $3,000, and where the commission found as a fact that the claimant as a result of an accident, suffered the loss of the hearing in his left ear, such finding entitled the claimant to the compensation provided for in the act, and the action of the commission in awarding the claimant compensation in the sum of $1,500 is affirmed.—Missouri Valley Bridge Co. v. State Industrial Com'n, Okla., 207 Pac. 562.

68.——Interest.—Where compensation, under the Employers' Liability Act had been demanded and the employer, though willing to pay, had never offered to pay, interest was properly allowed.—Garcia v. Salmen Brick & Lumber Co., La., 92 So. 335.

69.——Mistake.—Where a settlement fixing compensation of an injured workman was made and a release given to the employer under a mutual mistake of the parties as to the nature and extent of the injuries of the workman, and the compensation agreed upon is grossly inadequate, the agreement and release may be treated as nullities.—Crawn v. Fowler Packing Co., Kan., 207 Pac. 793.

70.——Negligence.—An employer who hires a boy of 14 years to travel with a circus, on a promise to pay him wages, board, and lodging, but the only lodging furnished him is a pile of canvas under circus wagons on a flat car without sides, whereby the lad while asleep is flung from the flat car as the circus train travels around a curve on the railway, is guilty of actionable negligence. Toelle v. Sells-Floto Shows Co., Kan., 207 Pac. 849.

71.——Parents' Consent.—Where plaintiffs' 17-year-old son had been employed at defendant's factory with plaintiffs' consent and approval for some time, without any specific agreement as to the work to be performed by him, and had worked at different kinds of work without objection, the relation of employer and employe was not terminated, so as to render the Employers' Liability Act inapplicable, by changing him from a work involving little danger to work of considerable danger without his parents' knowledge.—Garcia v. Salmen Brick & Lumber Co., La., 92 So. 335.

72. **Mortgages**—Contract.—A transaction whereby a life tenant took a contract of purchase from the purchaser at a foreclosure sale of the whole estate did not, under the findings of the court, sustained by the evidence, constitute an equitable mortgage.—Kreuscher v. Roth, Minn., 188 N. W. 996.

73.——Grantor's Claims.—Where a bank took and held the title to land as security only, and in violation of the contract or trust sold it to a third person, the grantor would be entitled to recover as damages the reasonable value of the land at the date of the conveyance, less the aggregate amount of his debts secured by liens thereon.—**Harris v.** Barnes City Savings Bank, Ia., 188 N. W. 862.

74. **Municipal Corporations**—Crossings. — Where by ordinance a vehicle approaching a street intersection from one direction is given the right of way over one approaching it from another, the driver of an automobile from the disfavored direction is not required under all circumstances before attempting to cross to await the passage of every car he can see coming from the other direction which by any possible burst of speed might reach the crossing of their paths ahead of him. It is not negligence as a matter of law for a driver from either direction to undertake to cross the intersection ahead of a car which is at such a distance that he has ample time to get across, provided the other car does not exceed the highest speed he should reasonably anticipate. And it is held that in the present case the evidence warranted a finding that the defendants' car was coming so rapidly that the plaintiff in the exercise of due diligence in that regard under-estimated its speed and reasonably believed that he had abundant time to cross until it was too late for him to do anything to avoid a collision.—Hughes v. Hudson-Brace Motor Co., Kan., 207 Pac. 795.

75.——Wages.—Ordinances of Seattle providing that contractors for city improvement work shall pay employees thereon not less than the current rate of wages paid by the city for work of like character (in no event less than a certain amount nor greater than another amount) are not invalid as a delegation to heads of city departments of the city's legislative power to fix the rate of wages; especially as the council appropriates money to pay laborers, and need not follow the recommendations of the department heads.—Jahn v. City of Seattle, Wash., 207 Pac. 666.

76. **Sales**—Commissions.—Where a contract between a manufacturer of tents and a buyer who was to sell the tents to a foreign government provided that the manufacturer should receive a certain amount of the sum paid by the government and that the buyer through remittances from the manufacturer should receive a specified amount of such sum, and a credit was arranged by the foreign government to pay for the tents as completed, a loss due to depreciation of foreign exchange should be shared between the manufacturer and the buyer in proportion to the amount of their respective shares of the amount to be received by them.—Archibald v. Panagoulopoulos, N. Y., 135 N. E. 857.

77.——Damages.—A contract by plaintiff for the purchase of boiler plates for export to Japan held to entitle it to plates which could be legally exported, and a complaint alleging that defendants, with knowledge of the contract, fraudulently obtained, and delivered under the contract, and received payment for plates, exportation of which was prohibited by government order, held to state a cause of action for damages.—Bencoe Exporting & Importing Co. v. Erie City I. Works, U. S. C. C A., 280 Fed. 690.

78.——Delivery.—A seller was not justified in canceling an order for a carload of cascara bark for "prompt shipment" because the buyer was reconsigning cars to shipping points where embargoes existed owing to congested war conditions, causing considerable delay in shipments; the term "prompt shipment" being usually understood to be more for the buyer's benefit and meaning no more than that the seller would deliver as promptly as possible, all things considered.—Meyer Bros. Drug Co. v. Callison, Wash., 207 Pac. 682.

79.——Delivery.—The phrase "f. o. b. San Francisco, contained in a contract in a paragraph headed "price," held to regulate delivery, where no other provision was made for delivery, in view of Personal Property Law, § 127.—Standard Casing Co. v. California Casing Co., N. Y., 135 N. E. 834.

80.——Intention.—Under a contract to deliver all the bituminous coal required by the schools of a city, of approximately 1,000 tons, with provision that the quantity to be purchased would be based upon the estimated annual consumption, reserving the right to order a greater or less quantity subject to actual requirements, the school board, by wholly discontinuing the use of anthracite and using bituminous coal exclusively, could not impose on the seller the duty of furnishing practically double the amount theretofore consumed and necessary under the conditions prevailing at the time of the contract.—C. A. Anderson C. Co. v. Board of Directors of Public Schools, La., 92 So. 303.

81.——Intention.—The rule at common law that no delivery of possession was necessary to the transfer of title to goods sold was re-enacted in the Uniform Sales Act; the completion of the bargain being all that is requisite, and the question being one of intention.—Commonwealth Title Ins. & Trust Co. v. Gregson, Ill., 135 N. E. 715.

82.——Time.—In an action for the purchase price of goods ordered on February 3d, with a clause to ship "March or at once as ready" which were not shipped until April 30th, and were refused by the buyer, held, that the parties intended shipment to be made in March or prior thereto, since, if the phrase referred to a subsequent time, the word "March" would be useless, and the words "at once" are usually construed to mean within such reasonable time as shall be required under all the circumstances for doing the particular thing.—B. A. Collins & Co. v. Gus Blass Co., Ark., 242 S. W. 70.

83. **Wills**—Persons Interested.—Vernon's Sayles' Ann. Civ. St. 1914, art. 3358, authorizing proceedings attacking the provisions of a will by any "person interested in the estate," refers to parties whose interest will be affected by the suit, and does not include beneficiaries under a will who are not heirs of the testator, but who sue to annul a bequest to a third person which would otherwise go to the heirs.—Haines v. Little, Tex., 242 S. W. 266.